

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

*In re BAYCOL PRODUCTS LITIGATION*

MDL NO. 1431 (MJD/SRN)

**REPORT AND RECOMMENDATION**

This Document Relates to:

*Paul Davis v. Bayer Corp., et al.*

Case No. 04-1234

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Reshonda Bradford, Esq., on behalf of Plaintiff Paul Davis

Susan Weber and James Mizgala, Esqs. on behalf of Defendant Bayer Corporation

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SUSAN RICHARD NELSON, United States Magistrate Judge

The above-entitled matter comes before the undersigned United States Magistrate Judge of District Court on Defendant Bayer Corporation's Motion for Discovery Sanctions against Plaintiff Paul Davis (Doc. No. 20). This matter has been referred to the undersigned for a Report and Recommendation pursuant to 28 U.S.C. § 636 and D. Minn. LR 72.1.

On November 14, 2006, Bayer filed a motion for discovery sanctions based on Plaintiff's failure to provide federal income tax returns, as previously ordered by the Court. (Doc. No. 20.) After this motion was filed, the Honorable Michael J. Davis granted Plaintiff an extension of time to produce the tax records. (Order, Nov. 29, 2006; Doc. No. 23.) Apparently, Plaintiff did not abide by the extension, and Bayer filed a second motion for sanctions on December 18, 2006, asserting the same factual basis as the first motion. (Doc. No. 24.) Two days later, however, Bayer withdrew the second motion without explanation. (Doc. No. 27.) Plaintiff subsequently filed a response to the second motion, even though it had been withdrawn, explaining that he had

produced tax records for four of the five years at issue. (Doc. No. 26.) As to the remaining tax year, Plaintiff could not obtain the tax return because of its age.

Presumably, Bayer withdrew its second motion for sanctions after receiving the tax information that Plaintiff was able to produce and discovering why Plaintiff was unable to produce one tax return. Given that the first motion for sanctions involves the exact same subject matter as the second motion, and Bayer has withdrawn the second motion, the Court finds that the first motion for sanctions is moot.

Accordingly, based on all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that Defendant Bayer Corporation's Motion for Discovery Sanctions against Plaintiff Paul Davis (Doc. No. 20) be **DENIED AS MOOT**.

Dated: January 18, 2008

s/ Susan Richard Nelson  
Susan Richard Nelson  
United States Magistrate Judge

Under D. Minn. LR 72.2(b) any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by February 4, 2008, a writing which specifically identifies those portions of this Report to which objections are made and the basis of those objections. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable to the Circuit Court of Appeals.